IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3598 of 2002

Date of decision : 13.11.2007

Smt.Shahni Devi

… Appellant

Versus

Jaswant Singh

…Respondent

Present : Mr.O.S.Batalvi, Advocate for the appellant.

Mr.Rajiv K.Sharma, Advocate for the respondent.

Vinod K.Sharma, J. (Oral)

This Regular Second Appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff for possession after removal of malba from the site in dispute marked as 'BCD' has been ordered to be dismissed.

The plaintiff brought this suit by claiming that she was owner in possession of land measuring 4 kanals. It was claimed that defendant No.1 had encroached upon 10 marlas of land which was in fact, transferred by way of sale deed by her husband. The learned counsel placed reliance on the report of the Local Commissioner dated 27.3.1995 to contend that defendants have encroached the land belonging to plaintiff-appellant. The defendants contested the suit on the plea that they have not encroached any area belonging to plaintiff-appellant.

Learned Courts below, on appreciation of evidence and by placing reliance on the jamabandi placed on record, have recorded a finding of fact that the plaintiff-appellant was the owner of 10 marlas of land, which was not even be disputed by the defendants. However, the learned courts

below have concurrently, recorded a finding of fact that the plaintiff-appellant had failed to prove that land transferred to her had been encroached by the defendant so as to enable her to claim a decree for possession. Learned Courts below have rightly rejected the report of the Local Commissioner, which was the basis of filing of the suit on the ground that the said report was ex parte without notice to the other party as well as contrary to the instructions issued by the Financial Commissioner in this regard. Consequently, the report of the Local Commissioner was rightly not taken into consideration.

There is no error or illegality in the judgments and decrees passed by the learned Courts below which may call interference by this Court in the Regular Second Appeal.

No question of law muchless substantial question of law arises for consideration in this appeal and the same is dismissed in limine.

[**Vinod K.Sharma**]

Judge

13.11.2007

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